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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Implementation of Sections of	)	
the Cable Television Consumer	)	MM Docket No.92-266
Protection and Competition Act	)	
of 1992	)	
	)	
Rate Regulation	)	

GTE's REPLY COMMENTS

GTE Service Corporation

Ward W. Wueste, Jr., HQE03J43
Marceil F. Morrell, HQE03J35
GTE Service Corporation
P.O. Box 152092
Irving, TX 75015-2092
(214) 718-6362

James R. Hobson
Jeffrey O. Moreno
Donelan, Cleary, Wood & Maser, P.C.
1275 K Street, N.W., Suite 850
Washington, DC 20005-4078
(202) 371-9500

Its Attorneys

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SUMMARY

GTE believes federal policy must reach beyond cable rate regulation and recognize the need for regulatory symmetry between the telecommunications and cable industries. Comments support the establishment of a regulatory scheme consistent with Congressional intent that will stimulate provision of broadband services to the American public. However, to realize the most efficient use of economic resources, the Commission must acknowledge that it cannot regulate the cable industry in isolation. What the Commission establishes in this docket must be measured against the issues the Commission is dealing with for common carriers.

Commission adoption of a benchmark for initial rates will meet Congressional objectives of reasonable rates and simplified regulation. Monopoly rents must be removed from existing cable rates. Initial rates should be set from a benchmark of competitive rates, possibly available from a compilation of data received from a substantial sample of Cable Operators within this proceeding. The same scheme of regulation should be applied to both basic and programming services.

Ongoing regulation using the Price Caps model is in the public interest and will address the concerns raised by parties in comments. The Commission has considerable experience with this form of regulation and has found that it better serves the public interest than traditional regulation. GTE believes price should be indexed to the same Gross National Product-Price Index less productivity that is used for exchange carriers.

The Commission's regulation of cable services should be accomplished through streamlined administrative processes. Streamlined application of existing Commission rules will allow the construction of a cable regulatory model that minimizes administrative burdens on regulators and Cable Operators, while recognizing the competitive realities of the merging telecommunications and cable industries.

Equipment and installation rates should be separated from other basic tier rates and cost-based until a competitive market develops. Competitive models should be utilized where possible and, in their absence, outlets should be priced on a non-recurring basis and should be limited to actual installation costs and equipment costs necessary to activate additional outlets. GTE proposes the Commission adopt a policy to unbundle equipment and cable home wiring installation wherever possible and define the date of implementation of the competitive model as concurrent with implementation of ET Docket 93-7.

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In the Matter of Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992 Rate Regulation	)))))))	MM Docket No. 92-266

GTE's REPLY COMMENTS

GTE Service Corporation, on behalf of the GTE Domestic Telephone Operating Companies ("GTOCs") and GTE Laboratories Incorporated (collectively "GTE"), respectfully submits its reply to comments filed in response to the Commission's Notice of Proposed Rulemaking ("NPRM").[1]

I. FEDERAL POLICY MUST REACH BEYOND CABLE RATE REGULATION TO CONSIDER THE CONVERGENCE OF THE TELECOMMUNICATIONS AND CABLE INDUSTRIES.

The comments submitted in this cable docket could not illustrate any more graphically the telephone companies' essential message, repeated so often in other contexts, of the critical relationships among content, conduit and revenues in the telecommunications industry. The National Cable Television Association, Inc. notes that "rates charged . . . determine the extent to which operators can invest in the programming and technology"[2] and Tele-Communications Inc. states that "[t]he

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1 Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992 - Rate Regulation, Notice of Proposed Rulemaking, MM Docket No. 92-266 (Released December 24, 1992).

2 National Cable Television Association, Inc. ("NCTA") at 1.

interests of consumers" in growth and innovation "are at risk."[3] Another group of Cable Operators note the "goal of insuring the ability . . . to continue to provide extraordinary benefits" and urge the Commission not to "stifle the flow of capital . . . the growth in plant, channel capacity, and diverse programming."[4]

As GTE has pointed out in several proceedings, these concerns apply not only to cable incumbents but to potential entrants into cable as well as to the Local Exchange Carriers ("LECs").[5] Unfortunately, these facts, however true, have not been addressed by the Commission in a comprehensive fashion. Instead, the Commission has proceeded on two separate and distinct paths.[6]

The comments offered clearly demonstrate that the telecommunications and cable industries are converging.[7] Not only is this true for these predominantly land line technologies; there is also a convergence of wireless and land line technologies.[8] Nor is it surprising that both industries are nearly unanimous that competitive, technical, and financial pressures require that national policy be implemented to permit private corporations to meet those pressures.

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3 Tele-Communications, Inc. ("TCI") at 4.

4 Adelphia Communications Corporation, *et al.* ("Adelphia Group") at 2-3.

5 Comments, February 3, 1992, 4-7, 10-12, Telephone Company-Cable Television Cross-Ownership Rules, Second Report and Order, CC Docket 87-266, 7 FCC Rcd 5781 (1992).

6 Telephone Company-Cable Television Cross-Ownership Rules, Sections 63.54-.58, Further Notice of Proposed Rulemaking and Second Further Notice of Inquiry, CC Docket No. 87-266, Comments of GTE Service Corporation, 18 n.43 filed February 3, 1992.

7 National Association of Regulatory Utility Commissioners ("NARUC") at 2, 4; BellSouth Telecommunications, Inc. ("BellSouth") at 11; GTE at 3, n. 7.

8 Rulemaking to Amend Part 1 and Part 21 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band and to Establish Rules and Policies for Local Multipoint Distribution Service, Notice of Proposed Rulemaking, Order, Tentative Decision and Order on Reconsideration, CC Docket No. 92-297 (released January 8, 1993); Fred Dawson, CellularVision's Wireless Revolution, Cablevision, Dec. 14, 1992, at 33, 34 (LMDS Operators "could use . . . spectrum for voice and data as well as TV transmission").

GTE and other LECs have a long history of pervasive regulation at both the state and federal level. Cable Operators have also had a history of regulation, albeit at the local and federal levels with minimal involvement of state commissions. Only in the period from 1984 through 1992 has the cable industry been unregulated. Regardless of the remonstrances of the Cable Operators that a "minority" of Cable Operators are "renegades,"[9] Congress chose to reregulate the cable industry.[10] The Congressional mandate to this Commission is clear: establish a regulatory scheme that will insure reasonable rates.[11]

GTE believes that the comments submitted to the Commission support the establishment of a regulatory scheme consistent with Congressional intent and which will stimulate the provision of broadband services, both informational and educational to the American public. However, to achieve the most efficient use of economic resources, the Commission must also acknowledge that it cannot regulate the cable industry in isolation. What the Commission establishes in this docket must be measured against the issues the Commission is dealing with for common carriers.[12] GTE's Reply Comments will address this process, and suggest a framework consistent with the record and Congressional public interest goals.

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9 NCTA at 5; TCI at 6 (In TCI's words, the euphemistic "bad actors"); Adelphia Group at 100.

10 Cable Television Consumer Protection and Competition Act of 1992, Pub.L. No. 102-385, 106 Stat. 1460 (1992) ("1992 Cable Act"); S.Rep. No. 92, 102d Cong., 1st Sess. 1 (1991); H.R. Rep. No. 628, 102d Cong., 2d Sess. 26 (1992).

11 1992 Cable Act, sec. 2(b)(4).

12 For example, Provision of Access for 800 Service, CC Docket No. 86-10; Telephone Company-Cable Television Cross-Ownership Rules, CC Docket No. 87-266; Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91-141; Transport Rate Structure and Pricing, CC Docket No. 91-213.

II. ADOPTION OF A BENCHMARK FOR INITIAL RATES WILL ENSURE CONGRESSIONAL OBJECTIVES OF REASONABLE RATES AND SIMPLIFIED REGULATION.

The overwhelming weight of comments supports the Commission's tentative conclusion that use of a benchmark rate is preferable to establishment of the initial rate using cost of service ratemaking.[13] While a substantial number of such comments also recommends that the Commission establish a competitive benchmark rate as the initial rate, only the Consumer Federation of America and the Coalition came forth with a definitive methodology and a resulting rate.[14] Other commenters, quite predictably, prefer to wait until the Commission makes public the compilation of data received in response to its Order in this Docket requiring a substantial sample of Cable Operators to file such data.[15]

Local Governments, in particular, recognize the usefulness of benchmarks in creating a simple and adequate method of controlling rates.[16] They note that "[r]ate regulation in such franchise areas should not impose undue administrative burdens if the Commission imposes a benchmark, rather than a cost-of-service, method of regulating basic service rates. . . ."[17]

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[13] NPRM at paragraph 2. *See*, NCTA at 10; TCI at 5, 16; Bell Atlantic at 7; BellSouth at 3; Adelphia Group at 51; National Association of Telecommunications Officers and Advisors, National League of Cities, United States Conference of Mayors, and the National Association of Counties ("Local Governments") at 40; Austin, Texas; Dayton, Ohio; Dubuque, Iowa; Gillette, Wyoming; Mongomery County, Maryland; St. Louis, Missouri; and Wadsworth, Ohio ("Coalition") at 11; Cox Cable Communications ("Cox") at 11.

[14] Consumer Federation of America ("CFA") at 89-91; Coalition at 11. Bell Atlantic at 7; Local Governments at 40; NCTA at 10; and TCI at 5, 16; all propose that the initial rate should be set using a competitive benchmark, as does GTE, but offered no specific rate.

[15] Implementation of Sections of the Cable Protection and Competition Act of 1992-Rate Regulation, Order, MM Docket No. 92-266, FCC 92-545 (Released December 23, 1992). *See*, TCI at 17; GTE at 7.

[16] Local Governments at 8.

[17] Id. at 23 fn 8.

In addition, Local Governments, like GTE, believe that the same scheme of regulation should be applied to both basic and programming services[18] and that the Cable Act does not allow Cable Operators to avoid regulation by offering all or most services on a per channel, a la carte, basis.[19] All services that are bundled together, whether also offered individually or not, are subject to rate regulation.

Channels offered a la carte appear not to be subject to regulation by the Commission.[20] TCI, however, would extend the construction of this provision to exempt any package of channels from regulation if each of the individual channels in the package is also offered a la carte.[21] Under TCI's view, a cable operator may escape regulation of its non-basic tiers[22] by making all the channels on the tier available a la carte. A cable operator would be free to charge uncompetitive rates for both its a la carte and packaged offerings. Although the package rate may be lower than the sum of the a la carte rates, neither rate would be required to be competitive.

A la carte channels avoid rate regulation essentially because they are offered on a per channel or per program basis. This distinction is lost when these channels

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18 Id. at 70; The basic rates test of reasonableness is no different from the requirement that cable programming service charges be "not unreasonable.".

19 Id. at 78.

20 *See* Section 3(a) at new Section 623(l)(2), defining cable programming service.

21 TCI at 26.

22 TCI also argues that a package of a la carte services is not a tier. Id. at 26. This is contrary to the current definition of "service tier" at 47 U.S.C. §522(14), which is unchanged by the 1992 Act. For purposes of the a la carte issue, however, it is irrelevant whether a group of a la carte channels is referred to as a tier or as a package.

are packaged in any combination. This fact was recognized in the House Report when it addressed the status of multiplexed premium channel offerings:

> This Committee takes note of the fact that, under the Act, services offered on a stand-alone, per-channel basis (premium channels like HBO and Showtime) or other programming that cable operators choose to offer on per-channel or pay-per-view basis are not subject to rate regulation. The Committee also notes that some cable operators are experimenting with "multiplexing" -- the offering of multiple channels of commonly-identified video programming as a separate tier (e.g., HBO1, HBO2, and HBO3). The Committee intends for these "multiplexed" premium services to be exempt from rate regulation to the same extent as traditional single channel premium services when they are offered as a separate tier or as a stand-alone purchase option.[23]

There would have been no need to exempt multiplexed services from regulation if Congress had intended that packaged offerings of individual channels not be subject to regulation in the first place.

As previously noted, Local Governments and GTE are also among those who support the use of prices from cable systems subject to competition to set basic service rates.[24] Like GTE's Comments at 7, Local Governments find that adjusting rates charged in 1986 for use as the benchmark would require that the Commission have "sufficient data available and finds it not unduly burdensome to adjust . . ." for changes since that time.[25] The Town of

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[23] H.R. Rep. No. 628, 102d Cong., 2d Sess. 80 (1992).

[24] Local Governments at 39, 41. Local Governments (at 44) express reservations about the adoption of cost of service regulation as a backstop for cable operators who want to justify rates in excess of the benchmark and assert that a cost of service methodology would "skew" regulation in favor of the Operators. GTE believes that the opportunity to cost-justify rates above the benchmark must be included to assure that the regulatory scheme will permit operators a reasonable opportunity to earn their cost of capital. Local Governments' concern over skewing the regulatory scheme can be rectified by permitting such a cost showing only if the Cable Operator can show that the initial rate set by the benchmark method is unreasonable. Future rates would be subject only to price caps.

[25] Local Governments at 42.

Williamston, North Carolina also expresses concerns about determining whether programming rates are reasonable and offers a test which appears to rely on competitive rates.[26] Even the TCI consultants support a benchmark that "mimics" competitive prices for initial basic tier rates.[27]

As the Commission is aware, a major factor to assure success of the 1992 Cable Act in protecting consumers from unreasonable cable rates is the determination of initial rates. "[T]he basic service tier rates must be made to be 'reasonable' in order to undo the excessive rate increases that have occurred since rate deregulation in 1984."[28]

Many of the proposals by the Cable Operators would do nothing more than thwart the purpose of the 1992 Cable Act. TCI, for example, correctly identifies many of the limitations and inefficiencies of traditional cost of service regulation, yet the alternative it supports would effectively leave customers of 95 percent of the Cable Operators with virtually no protection. TCI proposes a two-part scheme: basic rates would be subject to a benchmark established using a competitive standard while programming rates would be virtually unregulated, reduced only if in the top five percent of all rates.[29] This scheme would allow TCI to continue to extract monopoly rents from those customers subscribing to cable programming services. TCI's consultants offer no justification whatsoever for their claim that only the worst five percent of systems "should be subject to

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[26] Town of Williamston, North Carolina ("Williamston") at 24-26.

[27] Stanley M. Besen Et Al., Charles River Associates Incorporated, TCI Attachment, An Analysis of Cable Television Rate Regulation ("Besen") at 5.

[28] Williamston at 3.

[29] TCI at 15, 28.

any Commission oversight."[30] Adelphia Group and NCTA support this same scheme.[31] Further, TCI is retiering to make its basic tier of services so unattractive that few households will subscribe to only that service.[32] These Cable Operators would ignore the findings of Congress and create a "safe harbor" for almost all Cable Operators. Other recommendations, such as the provision of a "free season" of uncontrolled price changes each year[33] also fail to meet Congressional standards.

Retiering, such as that conducted by TCI, is clearly in anticipation of impending reregulation. Section 3(a) of the 1992 Act, at new Section 623(h), instructs the Commission to prevent evasion of regulations through retiering. GTE believes the Commission should use its authority under this section to "freeze" tiers as of the earliest lawful date,[34] creating a rebuttable presumption that retiering is an unreasonable rate increase.

This is consistent with the broad language of Section 623(h) and the legislative history. The Senate Report, for example, makes clear that Section 623(h) is "intended to give the FCC the authority to address changes in the cable industry or the industry's business practices that would thwart the intent of

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30 Besen at 45.

31 Adelphia Group at 96; NCTA at 61.

32 Attachment A is a representative channel guide for TCI offerings before and after retiering. A subscriber desiring to continue to purchase channels such as CNN will experience a rate increase of $3.70 per month.

33 Besen at 49.

34 While rate regulation itself does not take effect until April 3, 1993, the legislation was enacted October 5, 1992 and generally became effective December 4, 1992. For purposes of selecting a "snapshot" date against which future tier changes would be measured, GTE believes that at least the December date could be used, and perhaps the October date of enactment.

this section."[35] By making the presumption rebuttable, the FCC would heed the admonition in the House Report that an increase in rates through retiering, "standing alone, is not dispositive of whether such increases would be unreasonable under this section."[36]

Tiers should be frozen for future rate measurements as early as lawful to do so. Cable operators have been aware of the impending reregulation and have had every incentive to attempt to evade or minimize the anticipated impact. As GTE has already demonstrated, TCI has engaged in retiering so that basic service will be undesirable to most subscribers. This type of anticipatory conduct can only be reached, and the Act's purpose effectuated, if the regulations apply from enactment, or at least from the effective date of the Act.

The claim that during the pendency of unregulated monopoly provision of cable services consumers have benefited from improved quality of cable programming and cable distribution in a range between three and four billion dollars may ignore the impact of market power.[37] Others estimate that competitive cable rates are about three dollars a month lower than rates charged by firms not facing competition (which are at least 95 percent of all cable systems).[38] In other words, noncompetitive cable firms are extracting about two billion dollars a year in monopoly rents.[39] Given that cable firms have

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35 S. Rep. No. 92, 102d Cong., 1st Sess. 77 (1991).

36 H.R. Rep. No. 628, 102d Cong., 2d Sess. 89 (1992).

37 Besen at 13, n. 9.

38 Stanford L. Levin and John B. Meisel, Cable Television and Competition - Theory, Evidence and Policy, Telecommunications Policy, December 1991 at 519, 525 ("Levin and Meisel").

39 Levin and Meisel estimate that customers of competitive Cable Operators pay between $2.94 and $3.33 per month less for service than customers of systems not subject to competition. Id. at 525. Since there are about 55.6 million cable customers, this equates to $1.96 billion to $2.22 billion of consumer surplus extracted as monopoly rent annually.

been unregulated since 1986, the cumulative extraction of consumer surplus is beyond substantial.

Local Governments comprehend that due to past uncontrolled market power, "most cable rates contain a monopoly rent"[40] and they also, like GTE, recognize the need to remove monopoly rents from existing cable rates. They interpret the legislative directive of Congress to have the Commission reduce current rates "to the extent such rates are not reasonable. . . ."[41] The goal of Congress "will not be achieved if the Commission allows cable operators with rates that exceeded a competitive charge to continue to charge such an unreasonable rate."[42] Local Governments comment that the current proceeding is very like the regulation of the natural gas industry where the Supreme Court found that "because of anticompetitive conditions in the industry, Congress could not have assumed that 'just and reasonable' rates could conclusively be determined by reference to market price."[43]

GTE concurs in this conclusion and supports Local Governments' position that at "an absolute minimum, the benchmark rate should be set to result in rate reductions for approximately 28 percent of the nation's cable subscribers, . . . that Congress found were subject to the most egregious rate increases."[44] The Commission must reject the proposals by the Cable

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40 Local Governments at 43.

41 Id. at 4.

42 Id. at 5.

43 FPC v. Texaco Inc., 417 U.S. 380, 399 (1974).

44 Local Governments at 43. GTE's Attachment B illustrates how to establish an initial benchmark against which Cable Operators' present rates may be measured and any reductions determined. Basic tiers and rates of Cable Operators on either October 5, 1992 or December 4, 1992 should be used to establish the initial regulated rate.

Operators that would result in rate decreases for any smaller percentage of subscribers. Given the conclusive Congressional findings in the 1992 Cable Act, proposals by Cable Operators to use prevailing price to set the benchmark and to determine future adjustments by using effectively unregulated prices are fatally flawed.

Attachment B provides an illustrative calculation, with hypothetical data, of how a reasonable monthly rate might be determined using the Congressional findings. In that table, the rate would be $18.00, or in some appropriate range around it, because the approximately 30% of subscribers above that level would have rates reduced in "rough justice" compensation for the "egregious" increases the legislators found were suffered earlier by about 28% of subscribers. Based on cable operator responses to the rate questionnaire, real numbers can be substituted for the hypothetical data.

Finally, with respect to the timing of initial rate regulations, GTE notes that there is an obvious gap between April 3, 1993, when the Commission is required to make effective its rules in compliance with the 1992 Cable Act and the date when the franchising authority will be certified to initiate rate regulation. Congress did not intend to leave Cable Operators free to continue unregulated after April 3, 1993. There is sufficient evidence presented in the filed comments and in Congressional findings for the Commission to conclude that Cable Operators' present rates are unreasonable. The Commission should permit such rates to be continued only upon each Cable Operator filing an appropriate undertaking to refund from April 3, 1993 any amounts finally determined to be unreasonable. Such filing should be made with those franchising authorities seeking certification on or before May 3, 1993.[45]

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[45] Local Governments at 90. GTE believes that the 1992 Act leaves basic rates unregulated unless and until cities seek federal certification, with the FCC only stepping in upon refusal or revocation of certification. Section 3(a), amending Section 623 of the Communications Act, 47 U.S.C.§543.

III. ONGOING REGULATION USING THE PRICE CAPS MODEL WILL ADDRESS THE CONCERNS OF THE PARTIES AND IS IN THE PUBLIC INTEREST.

Once initial rates are set, price caps regulation is supported by a number of parties.[46] The Commission has considerable experience with this form of regulation and has found that it better serves the public interest than traditional regulation. Adoption of a price caps model meets the legitimate concern that both industries--cable and telephony--be subjected to symmetrical regulation, because the industries are converging not merely in a technical sense, but also in scope and functions. TCI recognizes the major flaw in the LEC price caps plan: It combines both price constraints and rate of return, cost of service regulation. "Only in its purest abstract form can a price cap formula benefit consumers."[47] TCI criticizes the inclusion of the components of traditional regulation in an effective price cap scheme. GTE concurs in TCI's concerns and supports "pure" price caps for both industries.

Williamston questions whether all franchising authorities may have the expertise and resources necessary to ensure that the Cable Operator's rates are reasonable under the Commission standard. Williamston is concerned that it lacks the expertise to regulate Cable Operators, particularly the application of traditional rate base regulation, and calls upon the Commission to find ways to implement this regulation without burdening the cities.[48] While GTE shares the concern for reasonable rates, it is clear that a price caps formula can serve to

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[46] Bell South at 10, Local Governments at 40, Bell Atlantic at 4.

[47] TCI at 20.

[48] Williamston at i, 21. They note that they do have access to accounting experts that could serve to "determine that the CATV operator is in fact keeping its books and records in accordance with the FCC prescribed rules." Id. at 21 This assessment is consistent with the GTE recommendation that the Cable Operator be required to have a CPA certify the compliance of its accounting procedures. GTE at 10 n.29.

ensure both that rate increases are reasonable and that they will be easily administered.

Many parties, including cable operators, recommend that the Commission adopt a benchmark approach with a price adjustment. GTE believes this is price caps without the explicit productivity factor and other restrictions. The Commission has already found that price caps as a preferred regulatory method encourages efficient regulatory behavior.[49] For example, in the case of benchmarks, "[a] firm has an incentive to behave more efficiently . . . because the benchmarks are not tied to the firm's own costs."[50]

While GTE agrees that prices should not be tied to a firm's own costs, benchmarks are inadequate going forward. When a non-competitive Cable Operator's rate is below the selected benchmark, it should be assumed -- absent contrary evidence -- that the operator nevertheless is covering its costs and earning a return. Therefore, if allowed freely to raise rates below the benchmark, Cable Operators have a continued ability to implement price increases that capture monopoly rents and charge unreasonable rates.

Local Governments share this concern about current rates below the benchmark[51] but incorrectly conclude that a price cap formula may therefore allow rates to be raised to unreasonable levels. This concern can be easily addressed by applying the price cap indices to the particular rates of the Cable Operator rather than the "benchmark" rates.

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49 Policy and Rules Concerning Rates for Dominant Carriers, CC Docket 87-313, 4 FCC Rcd 2873, 2878 ("Price Caps Order").

50 Besen at 30.

51 Id. at 45 n.20.

GTE therefore advocates a price caps scheme and recommends that the price be indexed to the same Gross National Product-Price Index ("GNP-PI") less productivity that is used for the LECs. The price index less productivity is the proxy measure of the changes in input prices.[52] Several parties propose other indices including the Consumer Price Index ("CPI") and the Service Price Index ("SPI").[53] These are not appropriate because they capture output (consumer) prices, not input prices. Further, the suggestion to use price changes in a selective set of consumer services such as the admissions component of the CPI[54] is in direct opposition to price caps theory. While movies may be an input for Cable Operators, the appropriate price for comparison should be determined at the wholesale, not retail or consumer, level.

GTE is unable to concur in Local Governments' assertion that the price index must be regionally based to ensure reasonable rates.[55] Many of the cable factors of production such as fiber and electronics are economy wide, rather than regional in nature. To the extent a particular Cable Operator is affected by a local condition that is clearly outside of its control and not affecting other producers, its price cap index can be adjusted using the exogenous "z" factor.

Local Governments suggest that the Commission only allow adjustments to the benchmark every three years in order "to limit the administrative burdens

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52 Price Caps Order, 4 FCC Rcd at 2969-74 ("In searching for an index that reflects the totality of the inflationary pressures faced by carriers, the broad-based GNP-PI is superior to indexes that reflect only consumer prices or the prices faced by manufacturers.").

53 Local Governments at 40; NCTA at 32; Besen at 34; Falcon Group at 32; Adelphia Group at 62.

54 Adelphia Group at 62.

55 Local Governments at 40 n.19.

on franchising authorities. . . ."[56] GTE does not share this position since the administration of pure price caps is quite simple and it is unreasonable to tie Cable Operators to what would effectively be three-year price freezes.

While cable operators suggest a number of automatic "exogenous" changes be included which would allow them to increase prices,[57] they do not suggest the inclusion of a productivity offset. The Cable Operators seem to be conveniently ignoring the need to adjust the index of input prices for the industry's productivity in excess of the economy's norm. In the LEC price caps proceeding, the Commission determined that the productivity difference for LECs was 3.3 percent. Given the high degree of common technologies and the even greater expected future commonality,[58] it is appropriate that the same price index and productivity offset be used in regulating both industries.

In Summary: GTE believes price caps regulation should be used on a going forward basis to determine prices. This form of regulation will be easy to implement and administer. Furthermore, it addresses subscriber and cable interests in an equitable fashion.

IV. THE COMMISSION'S REGULATION OF CABLE SERVICES SHOULD BE ACCOMPLISHED THROUGH STREAMLINED ADMINISTRATIVE PROCESSES.

Congress has mandated a cable regulatory model be developed that minimizes administrative burdens on regulators and Cable Operators. GTE believes existing Commission rules, applied in a streamlined fashion, allow the construction of such a

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[56] Id.

[57] Besen at 35; NCTA at 32-33; Cox at 13 n.10.

[58] Randy Sukow and Rick Brown, Time Warner Unveils 'Full Service' TV, *Broadcasting*, Feb. 1, 1993 at 6.

regulatory model. Any model developed in this proceeding must balance the administrative concerns of the statute with the competitive realities of the converging industries.

Regulatory reporting and cost identification procedures for common carriers are found in Parts 32, 36, 43, 64, and 68 of the Commission's Regulations. These sections deal with regulations for accounting systems, jurisdictional separations, periodic carrier reports, cost allocation and reporting, and equipment and premise wiring connection. The adoption of the price caps methodology, discussed previously and similar in nature to Part 61, minimizes the requirement for additional regulations pertaining to cost accounting and jurisdictional separations. Limited cost of service requirements can be met through a combination of the NPRM's proposed regulations contained in Appendices A, B and C and a streamlined version of existing Commission Regulations (Parts 43, 64 and 68). Portions of existing regulations to be used could include:

Part 43	Section 43.21 annual reports of carriers and certain affiliates.
	Section 43.43 reports of proposed changes in depreciation rules.
Part 64	Subpart I allocation of costs and transactions with affiliates.
Part 61	Sections 61.4X price cap baskets and service categories, filing requirements, specific index and band adjustments, quality of service reporting, and supporting information requirements.
Part 68	Subpart B requirements for terminal equipment registration, means of connection, and compatibility of network and terminal equipment. Subpart C equipment registration requirements, installation of simple customer premises wiring, and changes in registered equipment.

V. EQUIPMENT AND INSTALLATION RATES SHOULD BE SEPARATED FROM OTHER BASIC TIER RATES AND COST-BASED UNTIL COMPETITIVE MARKET DEVELOPS.

After reviewing the comments, GTE believes the position stated in its Comments is still valid. Equipment and installation rates should be separated from other basic tier

rates. Installation should be unbundled into two components: installation of premise wiring and service connection. Competitive models should be utilized where possible and, in their absence, direct cost analysis should be used to develop initial prices. At a minimum, the Commission should formulate policy to foster open connection of equipment and consumer provision of cable home wiring.

Commenters uniformly agree that Congress intended the statute to separate rates for equipment and installation from other basic rates. Interpretation of how the Commission can satisfy that Congressional intent and the scope of rates that should be unbundled varies greatly.

Some parties contend the scope and content of regulation required by the statute should be interpreted narrowly.[59] As justification to exempt as many rates as possible from cost-based regulation, they cite reasons such as system equipment incompatibility, theft of service and Congressional intent to focus regulation narrowly on equipment solely used to receive basic service. They suggest the statute does not prohibit bundled rates and that there are no monopoly profits in rates if overall rates cover overall costs.

Congress has made two objectives very clear. (1) Cable has market power and monopoly rents must be removed from as many rates as possible, and (2) a competitive preference is to be favored. A narrow interpretation of the statute will not realize those objectives.

GTE and several other parties maintain Commission interpretation of the statute should be broad.[60] Any equipment and installation necessary to receive basic tier service must be subject to competitive models or "actual cost" regulation. Congress'

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[59] Adelphia Group at 66, 68; NCTA at 45, 53, 54.

[60] CFA at 130-132; Local Governments at 46, 49; Coalition at 54; Bell Atlantic at 11; NYNEX at 11; GTE at 13-14.

intent of eliminating rate gouging and emulating competitive market pricing will not be served if cable operators are permitted to make unrestricted monopoly profits from equipment and installation charges.

The rates for equipment and installation should be unbundled from both the rates for basic tier service and cable programming service. The availability of converter boxes and remote control devices in consumer electronic stores and Congressional preference for competition also indicate a broad interpretation is correct. GTE asserts such an interpretation of the statute is in the public interest and best meets Congressional intent.

Most non-cable parties are consistent in their belief that installation rates should be unbundled and some maintain such rates should reflect different costs for "regular" and "non-regular" installations.[61] Cost-based pricing is considered appropriate. GTE proposes installation rates be unbundled into two activities -- service connection and wire installation -- and advocates use of the LEC competitive model for cable home wiring.[62]

Though the Commission's recent order on cable home wiring declines to address the issue of customer provision, it indicates an inclination to consider the issue in a future proceeding.[63] GTE believes the competitive goals of the statute indicate a competitive model is appropriate and should be given extended consideration in this or a future proceeding.

Recurring service charges for additional outlets is an issue of concern to many commentors. One set of comments contends that cable additional outlets are different

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61 Local Governments at 46; Coalition at 54; Bell Atlantic at 11; NYNEX at 11.

62 GTE at 13.

63 Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Cable Home Wiring, Report and Order, released February 2, 1993.

from extension telephones (which allow only one conversation).[64] GTE and other commenting parties maintain such contention is wrong.[65] It completely ignores the fact that the additional costs incurred by a cable operator to provide service to additional outlets are minuscule at best.

The Cable Operators' input prices, for today's non-switched broadcast systems, are not dependent upon the number of TV sets connected to the cable system. Charges for additional outlets should be determined on an "actual cost", non-recurring basis. That is they should be limited to actual costs of any equipment necessary to activate additional outlets and actual installation costs, if any. Consumer frustration is best evidenced in the hand written comments of James Pappas of Orland Park, Illinois. Mr. Pappas stated, "You should not be charged for extra T.V.'s in your home! ... stop the cable companies from gouging us !!"[66]

GTE's proposal to limit the cost-based standard to leased customer equipment and permit open network connection was shared by other commenting parties.[67] Rules are warranted to allow connection of customer-provided equipment and to require notification to current customers and new customers at the time service is requested. Current technology permits television receivers and video cassette recorders (VCRs) to incorporate many of the functions of the cable converter box and remote control devices. Use of "cable ready" consumer equipment should not be precluded by cable operators requiring their system equipment must be leased in order to obtain service. This requirement for duplicate equipment is clearly an

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64 Adelphia Group at 80-81.

65 Local Governments at 51; Coalition at 54-55; GTE at 14.

66 James Pappas at 1. If Mr. Pappas has a dual cable system such as TCI's Dallas system, he would also require a separate converter at each set.

67 Bell Atlantic at 11; NYNEX at 11; City of St. Petersburg, Florida at 27; Williamston at 27.

inefficient use of resources. Commission adoption of rules which prohibit operators from imposing such "add-on" charges is in order.

The Commission may have an opportunity to address some of the issues raised concerning equipment compatibility and installation of home wiring within ET Docket No. 93-7.[68] That proceeding is intended to obtain information regarding means of assuring compatibility between consumer electronics equipment and cable systems. Congress directs the Commission to develop regulations to assure compatibility between consumer and cable system equipment, consistent with the need to prevent theft of cable service. These regulations must be developed within eighteen months of enactment of the 1992 Cable Act. This provides a realistic time frame in which a competitive model can be implemented.

GTE proposes the Commission expand the scope of the proceeding in ET Docket No. 93-7 to obtain information on compatibility issues that might arise through customer provision of in-home wiring. GTE urges the Commission to adopt a policy to unbundle equipment and cable home wiring installation wherever possible and define the date of implementation of the competitive model in ET Docket No. 93-7.

CONCLUSION

For the foregoing reasons, the Commission should implement the rate control and other requirements of the 1992 Cable Act with an eye toward the regulatory parity befitting the technological and functional convergence of telephone, cable and other telecommunications industries.

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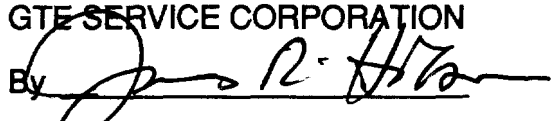
[68] Implementation of Section 17 of the Cable Television Consumer Protection and Competition Act of 1992, Compatability Between Cable Systems and Consumer Electronics Equipment, Notice of Inquiry, ET Docket No. 93-7 (released January 29, 1992).

Specifically, the use of benchmarking for initial rates, adjusted by price caps methods, will make the process fair and manageable, so long as Cable Operators are permitted to cost-justify prices above the chosen benchmark. Where cost-of-service methods come into play, accounting and reporting requirements based on simplified Title II categories, as proposed by the NPRM, should be applied.

Equipment and installation charges -- both service connection and wire installation -- should be separated from other basic tier rates and based on costs until a competitive market develops. The Commission should look to the compatibility docket, ET93-7, or further proceedings here or in the home wire docket, MM92-260, for development of a telephone model of customer premises equipment regulation applicable from the start of cable service, not merely upon termination.

Respectfully submitted,

GTE SERVICE CORPORATION

By 

Ward W. Wueste, Jr., HQEO3J43
Marceil F. Morrell, HQEO3J35
P.O. Box 152092
Irving, Texas 75015-2092
(214) 718-6362

James R. Hobson
Jeffrey O. Moreno
Donelan, Cleary, Wood & Maser, P.C.
1275 K Street N.W., Suite 850
Washington, D.C. 20005-4078
(202) 371-9500

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ITS ATTORNEYS